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Supreme Court, U.S.
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No. 687

In the Supreme Court of the United States

OCTOBER TERM, 1946

JOHN H. FAHEY AND A. V. AMMANN, INDIVIDUALLY AND RESPECTIVELY AS FEDERAL HOME LOAN BANK COMMISSIONER AND CONSERVATOR, FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, APPELLANTS

v.

PAUL MALLONEE, C. H. NEWHOUSE, WINNIE BUCKLIN, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

In the District Court of the United States in and for the Southern District of California, Central Division

Civil Action File No. 5421-PH

PAUL MALLONEE, ET AL., PLAINTIFFS

v.

JOHN H. FAHEY, ET AL., DEFENDANTS

JURISDICTIONAL STATEMENT

To the District Court of the United States in and for the Southern District of California, Central Division:

The defendants-appellants, John H. Fahey and A. V. Ammann, individually and respectively as Federal Home Loan Bank Commissioner and as Conservator for the Long Beach Federal Savings and Loan Association, having this day presented their petition for appeal, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court to entertain the appeal in this case in compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States, adopted February 13, 1939:

(A) *The Statutory Provision Believed to Sustain the Jurisdiction.*—This appeal is perfected from a final order, judgment or decree which per-

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manently restrains the defendants John H. Fahey and A. V. Ammann from merging or consolidating the Long Beach Federal Savings and Loan Association or commingling its assets with other financial institutions; from holding an administrative hearing and which forthwith removes the said A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association and restores the former officers of said Association to full possession of and control of the business of said Association.

The final order, judgment or decree here appealed from was entered in the District Court of the United States for the Southern District of California, Central Division, on the 30th day of September, 1946, by a statutory court consisting of one circuit and two district judges, specially convened under and by virtue of the provisions of Section 3 of the Act of August 24, 1937, 50 Stat. 751 (28 U. S. C. A., section 380 (a)). The said statute provides *inter alia* as follows:

> An appeal may be taken directly to the Supreme Court of the United States upon application therefor or notice thereof within thirty days after the entry of the order, decree, or judgment granting or denying, after notice and hearing, an interlocutory or permanent injunction in such case.

(B) *The statute of the United States involved.*—The statute of the United States, the validity of which is involved herein and the enforcement and operation of which was sought to be enjoined and which was by the Court held unconstitutional, is section 5 (d) of the Home

Owners' Loan Act of 1933, as amended, chapter 64, section 5 (d), 48 Stat. 128 (12 U. S. C. A., section 1464 (d)), which provides as follows:

> The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation.

(C) *The date of the judgment or decree sought to be reviewed and the date upon which the application for appeal is presented.*—The final order, judgment or decree here sought to be reviewed was entered and spread of record on the 30th day of September 1946.

The petition for appeal herein was presented and filed on the second day of October 1946.

(D) *Statement showing that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied upon.*—On May 20, 1946, the Federal Home Loan Bank Administration issued its Order No. 5254 appointing A. V. Ammann conservator for the Long Beach Federal Savings and Loan Association, Long Beach, California, on the grounds that it was conducting its business in an unlawful, unauthorized and unsafe manner; that it had a management which was unsafe and unfit to manage a Federal savings and loan association and that it was pursuing a course that was jeopardiz-

ing and injurious to the interests of its members, its creditors and the public. Said order was issued pursuant to rules and regulations of the Federal Home Loan Bank Administration adopted under authority of Section 5 of the Home Owners' Loan Act of 1933, as amended, 48 Stat. 128 (12 U. S. C. A., 1464).

On May 20, 1946, said A. V. Ammann took charge of said Association and since said date has conducted the affairs of said Association, which has continued the normal and usual business of a Federal savings and loan association.

On May 27, 1946, the plaintiffs filed in the United States District Court for the Southern District of California, Central Division, their complaint against these defendants individually and respectively as Federal Home Loan Bank Commissioner and as Conservator for the Long Beach Federal Savings and Loan Association, joining as defendants the Long Beach Federal Savings and Loan Association and others. Asserting that the Acts of Congress under which these defendants were acting were unconstitutional, the complaint prayed that the said A. V. Ammann be removed as conservator; that the officers of the Long Beach Federal Savings and Loan Association be placed in control and possession; that these defendants be ordered to account to the Long Beach Federal Savings and Loan Association; that the defendants be enjoined and restrained from making any transfers, conveyances, mergers or other diversions of the assets of the said Long Beach Federal Savings and Loan Association and that a preliminary injunction be made enjoining and re-

straining them and each of them during the pendency of the action from merging, consolidating, reorganizing or in any other way uniting or commingling the assets, membership shares, members or any other persons or property of the Long Beach Federal Savings and Loan Association nor any part thereof with any other organization, bank, corporation, association or institution. Asserting also that the action sought injunctive relief to restrain the enforcement, operation and execution in whole or in part of Acts of Congress upon the grounds that such Acts or part thereof are repugnant to the Constitution of the United States, the complaint requested the convening of a three judge court pursuant to the provisions of "Section 380 (a), Title 28 of the Federal Judicial Code."

On the same date the plaintiffs filed a motion for a preliminary injunction to restrain such merger and consolidation and on the same date presented a motion for a temporary restraining order to restrain such merger. This was based on the alleged unconstitutionality of the Act. The temporary restraining order issued on the same date.

On June 14, 1946, the defendant Ammann filed a motion to dismiss.

On July 1, 1946, the plaintiffs filed their motion for a temporary injunction to restrain the holding of an administrative hearing, which administrative hearing had been theretofore, to wit: on the 5th day of June 1946, by Order No. 5309, ordered by the Federal Home Loan Bank Administration pursuant to the demand of the Long Beach Federal Savings and Loan Association,

made on the 30th day of May 1946, all in accordance with the duly adopted rules and regulations of the Federal Home Loan Bank Administration. This motion was based on the alleged unconstitutionality of the Act.

On the said first day of July 1946, plaintiffs also presented to the Court their motion for a temporary restraining order to restrain the holding of said administrative hearing, which motion was by the court granted and the order issued.

On July 1, 1946, the Judge of the District Court entered an order setting the 15th day of July 1946, for hearing by a court composed of three judges the following:

> Motion for preliminary injunction Re: restraining the defendants from merging the said Long Beach Federal Savings and Loan Association.
>
> Plaintiff's motion for preliminary injunction to restrain the holding of an administrative hearing, "together with all other motions in this matter remaining unheard and undecided which have heretofore been noticed for July 1, 1946."

On the 15th day of July 1946 a three judge court, consisting of one circuit judge and two district judges, convened and upon the calling of this case made the following ruling:

> In order that there be no confusion, so counsel will know exactly what they have to follow, we rule now we will not consider any question presented other than on the constitutionality of the statute under question.

Thereupon the plaintiffs, the cross claimants in interpleader and defendant, Ammann, thas

limited by the court, made their arguments upon plaintiffs' motion for preliminary injunctions and upon defendant Ammann's motion to dismiss, only upon the constitutionality of the Home Owners' Loan Act of 1933, as amended. No other hearing was held by the three judge court.

On September 5, 1946, there was filed the opinion of the three judge court holding Section 5 (d) of the Home Owners' Loan Act of 1933, as amended, unconstitutional and void as an unlawful delegation of legislative authority, and that the statute itself must provide for notice and hearing. The court entered a final decree which permanently restrains the defendants John H. Fahey and A. V. Ammann from merging or consolidating the Long Beach Federal Savings and Loan Association or commingling its assets with other financial institutions; from holding an administrative hearing and which forthwith removes the said A. V. Ammann as Conservator for the Long Beach Federal Savings and Loan Association and restores the former officers of said Association to full possession of and control of the business of said Association.

Substantial questions are involved in that the lower court has declared unconstitutional a provision of a statute whereby Congress has delegated to a public board certain regulatory authority over Federal savings and loan associations, which are Federal instrumentalities and quasi public institutions.

No other material hearings or trials have been held whatsoever.

Attached hereto are copies of the opinion of the three-judge court holding Section 5 (d) of the

Home Owners' Loan Act of 1933, as amended, unconstitutional, and copy of the findings, conclusions of law and decree of the three-judge court.

The effect of the decree is summarily to grant to the plaintiffs, upon an application for a preliminary injunction, the full, complete, ultimate and final remedies sought in the entire action, without affording the defendants an opportunity to present any defense.

(E) *Cases believed to sustain the jurisdiction.*—The following decisions are believed to sustain the jurisdiction of the Supreme Court of the United States:

Mayo, Commissioner v. *Lakeland Highlands Canning Co.*, 309 U. S. 310.

Oklahoma, ex rel Phillips, Governor, v. *Guy F. Atkinson, et al.*, 313 U. S. 508.

Dated: October 2, 1946.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General,
JAMES M. CARTER,
United States Attorney,
Ronald Walker
RONALD WALKER,
Assistant U. S. Attorney,
Attorneys for defendant, A. V. Ammann, individually and as Conservator for the Long Beach Federal Savings and Loan Association, and John H. Fahey individually and as Federal Home Loan Bank Commissioner.

In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 5421-P. H.

PAUL MALLONEE, ET AL., PLAINTIFFS,

v.

JOHN H. FAHEY, ET AL., DEFENDANTS

HOME INVESTMENT COMPANY OF LONG BEACH, A CORPORATION, INTERVENOR

v.

PAUL MALLONEE, ET AL., AND JOHN H. FAHEY, ET AL., DEFENDANTS IN INTERVENTION

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

FEDERAL HOME LOAN BANK, ET AL., THIRD PARTY DEFENDANTS

ROBERT H. WALLIS, DEFENDANT AND THIRD PARTY DEFENDANT

v.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

TITLE SERVICE COMPANY, A CORPORATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

JOHN H. FAHEY, THIRD PARTY DEFENDANT

Before ORR, Circuit Judge, and HALL and LINO, District Judges

ORR, *Circuit Judge:* The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home Loan Bank Act as amended. At the time of its incorporation its assets had a value of approximately $7,500. It has had the same president and board of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution by John H. Fahey, Administrator, took charge of said institution, and has since been in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association. Several petitions in intervention and third party claims have been filed. All but one of them have joined in the motions of the original plaintiff for injunction.

Temporary orders were issued restraining the merger of the institution with other institutions

of like character and restraining the commissioner from holding an administrative hearing.

At the request of certain of the parties a three-judge court was convened under authority of Sec. 380 (a) of the Judicial Code (28 U. S. C. A. Sec. 380 (a)).

Defendant Ammann has challenged the jurisdiction of the three-judge court to hear and determine the application for the restraining orders on the ground that the provisions of Sec. 380 (a) have no application to the law and the facts as presented by said applications. Defendant Ammann's position is: That the instant proceeding seeks to restrain the operation of rules and regulations promulgated by the Board rather than the enforcement, operation or execution of or setting aside in whole or in part of an act of Congress on the ground that the law itself is unconstitutional.

We think the contention is without merit. Authority to do the acts sought to be restrained, is found to exist, must be bottomed on subsection (d) of Sec. 5[1] of the Federal ome Loan Bank Act, as amended. It is on the direct operation of this statute that the commissioner must rely.

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[1] 12 S. C. A. Sec. 1464 (d): "(d) The Board shall have full power to provide in the rules and regulations herein authorized for the reorganization, consolidation, merger, or liquidation of such associations, including the power to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation."

Threatened action under the authority of the statute is sought to be restrained on the ground that the statute is unconstitutional and void in that it attempts to confer legislative power on the board. Clearly this proceeding comes within the provisions of Sec. 380 (a) and the question is required to be heard by a three-judge court.

Appellants concentrate their attack on subsections (a) and (d) of Sec. 5 of the Act. It is argued that subsection (d), in attempting to authorize the board to make rules and regulations for the purposes mentioned in said subsection (d) delegates legislative power to the board without prescribing either adequate, or any statement of policy, standards, limitations, or criteria to guide the board in exercising its functions and is contrary to Article I, Section 1, and Article I, Section 8 (paragraph 18), of the Constitution of the United States (U. S. C. A. Constitution, Article I, Sec. 8; Clause 18).

It is agreed that functions of the legislature may not be delegated by the Congress to any executive or executive department; hence, there is posed a single question for determination, to wit: Has the Congress made such a delegation in the sections of the Act under consideration? Fortunately the course to be followed in determining questions of this character has been well chartered by the Supreme Court of the United States. We have but to endeavor to make the proper application of the principles by said court enunciated to the conditions existing in the matter before us. We refer particularly to *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, and *Schechter* v. *U. S.*, 295 U. S. 495. We look to the statute to see whether

the Congress has declared a policy with respect to the providing of rules and regulations for the reorganization, consolidation, merger, or liquidation of Federal savings and loan associations, including the power to appoint a conservator or receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital stock of the same; and to release any such association from such control and permit its further operation; "Whether the Congress has set up a standard for the president's (board's) action; whether the Congress has required any finding by the president (board) in the exercise of the authority" to do the things enumerated in Sec. 5 (d) of the Act (*Panama Refining Co. v. Ryan, supra*, p. 415). It may be said of Sec. 5 (d), as was said of the section involved in the Panama case, that it is "brief and unambiguous." It makes no attempt to lay down rules for the guidance of the board, nor does it state in what circumstances or under what conditions the board is to merge institutions or appoint a conservator or receiver. It establishes no criterion to govern the board's course. It does not require any finding by the board as a condition of its action. No policy is declared by Congress as to merger or appointment of conservator. The Section gives to the Board unlimited authority to formulate rules for the board's action in the respects mentioned and to do so as it may see fit. The only restrictions on those powers were to be such as the board might choose to put upon itself in the rules and regulations which it, the board, adopted to govern itself. We are unable to find

in the Act a declaration of policy or standard of action which can be deemed to relate to the subject of section 5 (d).

The Los Angeles Bank, with assets of $43,000,000 was merged with a Portland bank and later both with a bank in San Francisco. While the legality of this merger is not before us we consider it because the aim of a statute may be learned "both from its terms and from the administrative practice under it" (*Schechter* v. *U. S., supra*). The merger was made without notice or hearing of any character. In fact, none is required by the statute, and herein lies a fatal defect as to its constitutionality.[2] We think due process requires a hearing on notice and this should be provided within the Act itself.

Comparison of the Home Owners Loan Act of 1933, as amended, under consideration here, with other acts of Congress which have been held unconstitutional because of improper delegation of legislative power, demonstrates that said Home Owners Loan Act fails to set [redacted] as comprehensive and definite statements of policy, standards, guides, criteria, and limitations as do those acts.[3]

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[2] *Ohio Valley Water Co.* v. *Ben Avon*, 253 U. S. 287; *Coe* v. *Armour Fertilizer Works*, 237 U. S. 413; *Hovey* v. *Elliott*, 167 U. S. 409; See also, *Boeing Air Transi* v. *Farley*, 75 F. 2d. 765.

[3] National Industrial Recovery Act: *Panama Refining Co.* v. *Ryan*, 293 U. S. 388; *Schechter Poultry Co.* v. *U. S.*, 295 U. S. 495; Bituminous Coal Conservation Act of 1935; *Carter* v. *Carter Coal Co.*, 298 U. S. 238; See also, *Ohio Valley Water Co.* v. *Ben Avon*, 253 U. S. 287.

We hold Sec. 5 (d) of Home Owners Loan Act of 1933, as amended, unconstitutional and void as attempting to delegate legislative power to the Federal Home Loan Bank Board created under the Federal Home Loan Bank Act.

Let judgment be entered in accordance with this opinion.

_____,

United States Circuit Judge.

_____,

United States District Judge.

_____,

United States District Judge.

(Endorsed:) Lodged Sept. 12, 1946. Edmund L. Smith, Clerk, by Theodore Hocke, Deputy Clerk.

(Endorsed:) Filed Sept. 30, 1946, at 5 min. past 10 o'clock A. M. Edmund L. Smith, Clerk, by J. M. Horn, Deputy.

In the District Court of the United States for the Southern District of California, Central Division

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Civil File No. 5421-P. H.

PAUL MALDONEE, C. H. NEWHOUSE, AND WINNIE HUCKWIN, INDIVIDUALLY, AND AS REPRESENTATIVES OF A CLASS, SUING FOR AND ON BEHALF OF ALL OF THE SHAREHOLDER MEMBERS OF THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, AN ASSOCIATION, ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE UNITED STATES OF AMERICA, PLAINTIFFS

v.

JOHN H. FAHEY, INDIVIDUALLY, JOHN H. FAHEY, AS CHAIRMAN OF THE FEDERAL HOME LOAN BANK BOARD, A. V. AMMANN, INDIVIDUALLY AND A. V. AMMANN, AS THE PURPORTED CONSERVATOR FOR THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, TITLE SERVICE COMPANY, SUED HEREIN AS JOHN DOE, ONE (CROSS CLAIMANT IN INTERPLEADER) R. H. WALLIS, SUED HEREIN AS JOHN DOE, TWO (CROSS CLAIMANT IN INTERPLEADER) ET AL., DEFENDANTS.

(1)

SUB NOMINAE

HOME INVESTMENT COMPANY OF LONG BEACH, A CORPORATION, INTERVENER

v.

PAUL MALLONEE, ET AL.; AND JOHN H. FAHEY, ET AL., DEFENDANTS IN INTERVENTION

THE LONG BEACH FEDERAL SAVINGS AND LOAN ASSOCIATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

FEDERAL HOME LOAN BANK, ET AL., THIRD PARTY DEFENDANTS

ROBERT H. WALLIS, DEFENDANT AND THIRD PARTY DEFENDANT

v.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

TITLE SERVICE COMPANY, A CORPORATION, DEFENDANT AND THIRD PARTY PLAINTIFF

v.

JOHN H. FAHEY, ET AL., THIRD PARTY DEFENDANTS

FINDINGS, CONCLUSIONS OF LAW, AND DECREE

Various motions came on to be heard on the 15th day of July 1946 at 2:00 o'clock P. M., in courtroom No. 3 of the above entitled Court, situated in the Federal Building, in the City of Los Angeles, State of California, upon the pleadings, notices of motion, affidavits, points and authorities and arguments of counsel, before a Statutory Court convened, pursuant to the provisions of Section 380 (a) of Title 28 of U.S.C.A., com-

posed of the Honorable William E. Orr, Judge of the Circuit Court of Appeals of the 9th Circuit, presiding, Judge David W. Ling, Judge of the District Court for the District of Arizona, and Judge Peirson M. Hall, Judge of the District Court for the Southern District of California.

Appearing as counsel for the various parties were:

Messrs. Wyckoff Westover and Steadman G. Smith, of the firm of Westover & Smith, Attorneys for the Plaintiffs;

James Carter, Esquire, United States Attorney at Los Angeles, by Rolland L. Walker, Esquire, Assistant United States Attorney, and Moe Silverman, Esquire, of the Nebraska Bar, Associate Counsel, representing the defendant A. V. Ammann, individually, and as conservator of the Long Beach Federal Savings and Loan Association, and the defendant John H. Fahey, specially, for the limited purpose only of making a motion to dismiss and to quash service of process upon defendant John H. Fahey;

Charles K. Chapman, Esquire, appearing for the defendant and cross claimant Long Beach Federal Savings and Loan Association;

H. O. Wallace, Esquire, of the firm of Thomas & Wallace, appearing as Attorneys for the defendant and cross claimant in interpleader Title Service Company, a corporation; and

Raymond Tremaine, Esquire, appearing as Attorney for the defendant and cross claimant in interpleader Robert H. Wallis.

The following motions were duly called for hearing and were argued by counsel for the respective parties, to wit:

1. Motions of the plaintiffs to continue in force, the Temporary Restraining Orders to restrain the merging of the said Long Beach Federal Savings and Loan Association with any other institutions, and to restrain the holding of an Administrative Hearing by the Federal Home Loan Bank Board or Administration, until the final adjudication and determination of the Plaintiffs' Motions for Preliminary Injunctions.

2. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association to Dismiss the Complaint.

3. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association, to Dismiss the Answer and Cross Claim in Interpleader of the defendant Title Service Company, a corporation.

4. Motion of the defendant A. V. Ammann, individually, and as Conservator of the Long Beach Federal Savings and Loan Association to Dismiss the Answer and Cross Claim in Interpleader of the defendant Robert H. Wallis.

5. Motion of the defendant John H. Fahey, individually, and as Chairman of the Federal Home Loan Bank Board, appearing specially, to Dismiss the Complaint, or in lieu thereof to Quash Service of Summons upon defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner.

6. Motion of the plaintiffs for Preliminary Injunction to restrain the defendants John H. Fahey and A. V. Ammann individually and in

their representative capacities, from merging or consolidating Long Beach Federal Savings and Loan Association, or commingling its assets with other institutions, and to take testimony and evidence at the hearing thereof.

7. Motion of the plaintiffs for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Administration or any other persons.

Counsel for plaintiffs presented a written motion to amend the Complaint in certain particulars, and leave of Court being first had and obtained, the same was allowed to be filed and there being no objection to said motion, the motion to amend was granted by the Court, and the Complaint so amended.

The Court next considered the matter of the plaintiffs' motions to continue in force the temporary restraining orders to restrain the merging of the said Long Beach Federal Savings and Loan Association with any other institutions, and to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, until the determination on the Plaintiffs' Motions for preliminary injunctions, and the Court thereupon granted both of said motions and continued the same in full force and effect until the determination by this three-judge Court re the question of constitutionality at issue herein.

The motions of the plaintiffs and of the defendant Long Beach Federal Savings and Loan Association to take oral testimony and evidence at the hearing on the Plaintiffs' motions for preliminary injunctions were both denied by the Court.

At the close of oral arguments by counsel representing the respective parties, on the 16th day of July 1946, the Court requested counsel for the respective parties to submit within five (5) days a compilation of their points and authorities on the sole question of the unconstitutionality of Paragraphs (a) and (d) of Section 5 of the Home Owners Loan Act of 1933, as amended; the said compilations of points and authorities, having been filed within the time allowed by the Court by counsel for all parties, and the Court, having considered the same together with the motion, affidavits, pleadings, and arguments, previously presented, now makes its findings as follows, to wit:

FINDINGS

I

The Long Beach Federal Savings and Loan Association was organized in 1934 under the Federal Home Loan Bank Act as amended. At the time of its incorporation its assets had a value of approximately $7,500.00. It has had the same president and board of directors during the ensuing years under whose management and guidance the institution has expanded to a point where, at the time of the seizure hereinafter referred to, its assets were of a value of approximately $26,000,000.00. It was at the time of seizure entirely solvent, with assets, in addition to an amount sufficient to pay its obligations, in the form of reserves and undivided profits in the sum of $1,300,000.00.

II

On May 20, 1946, A. V. Ammann, by virtue of his appointment as a conservator for said institution by John H. Fahey, Administrator, took charge of said institution, and has since been, and now is, in possession thereof. The conservator took over the Long Beach Federal Savings and Loan Association without notice or hearing of any kind. Subsequent to the taking possession of the bank an administrative hearing was ordered.

III

Plaintiffs are shareholders in the Long Beach Federal Savings and Loan Association and are suing as representatives of all members of that class.

IV

Temporary orders were issued restraining the merger of the institution with other institutions of like character and restraining the commissioner from holding an administrative hearing.

V

That prior to said seizure no demand was made upon said Long Beach Federal Savings and Loan Association, its officers or directors, for the correction of, or change in any of its policies, actions, procedures, or doings of any kind or nature. That there was no official criticism of said Long Beach Federal Savings and Loan Association, or any of its officers, directed to it.

VI

That prior to said seizure no notice was given to defendant Long Beach Federal Savings and Loan Association of any hearing of any kind or nature and the said Long Beach Federal Savings and Loan Association was afforded no opportunity to be heard by defendant John H. Fahey as Federal Home Loan Bank Commissioner, or by any of his assistants, agents, servants or employees, or at all.

VII

That Order No. 5254, dated May 20, 1946, purporting to appoint defendant A. V. Ammann to act as the Conservator of Long Beach Federal Savings and Loan Association and all acts taken by defendant A. V. Ammann, subsequent thereto, were done and made by defendant, A. V. Ammann, or under his direction or control, without any authority whatsoever, excepting only such as might claim to be derived from rules and regulations promulgated by said defendant John H. Fahey, under claim of color of authority to make such rules and regulations, pursuant to the rule making authority purportedly delegated by provision of subdivision (d) of Section 5 of Home Owners Loan Act of 1933, as amended.

VIII

That the defendant John H. Fahey has been duly and regularly served with process, both individually, and in his representative capacity as Federal Home Loan Bank Commissioner.

From the foregoing facts the Court concludes:

CONCLUSIONS OF LAW

1. That Section 5 (d) of the Home Owners Loan Act of 1933 as amended is unconstitutional in that it is repugnant to Article I, Section 1, and Article I, Section 8, Clause 18 and Amendments Nos. IV and V of the Constitution of the United States of America.

2. That the motion of the defendant A. V. Ammann, both individually, and as conservator of the Long Beach Federal Savings and Loan Association to dismiss the complaint and to dismiss the answers and cross claims in interpleader of the defendant Title Service Company, a corporation, and the defendant Robert H. Wallis should be denied; and

3. That this Court has acquired jurisdiction over the defendant John H. Fahey, that the motion of the defendant John H. Fahey, individually, and as Federal Home Loan Bank Commissioner to dismiss the Complaint, or in lieu thereof to quash service of summons, should be denied; and

4. That the motions of the plaintiffs for a preliminary injunction to restain the defendant from merging or consolidating the Long Beach Federal Savings and Loan Association, or commingling its assets with other institutions should be granted and made permanent; and

5. That the motions of the plaintiffs and of the defendant and cross claimant in interpleader, Title Service Company, a corporation, and of the defendant and cross claimant in interpleader Robert H. Wallis for a preliminary injunction to

restrain the holding of an administrative hearing by the Federal Home Loan Bank Board, or administration should be granted and made permanent; and

6. That the purported appointment of the defendant A. V. Ammann to act as Conservator for the Long Beach Federal Savings and Loan Association was, and is wholly illegal, null and void, and that all acts done and actions taken by him, as such purported Conservator, are void ab initio and of no force or effect.

DECREE

Now therefore, it is hereby Ordered, Adjudged, and Decreed:

1. That the motion of the defendant A. V. Ammann, both individually and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss this action be, and the same is hereby denied.

2. That the motion of the defendant A. V. Ammann, both individually, and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss the answer and cross claim in interpleader of the defendant Title Service Company, a corporation, be, and the same is hereby denied.

3. That the motion of the defendant A. V. Ammann, both individually, and as Conservator for the defendant Long Beach Federal Savings and Loan Association to dismiss the answer and cross claim in interpleader of the defendant Robert H. Wallis, be, and the same is hereby denied.

4. That the motion of defendant John H. Fahey, both individually, and as Federal Home Loan Bank Commissioner, and as Chairman of the Federal Home Loan Bank Board, to dismiss, or in lieu thereof, to quash service of summons be, and the same is hereby denied.

5. That the motion of the plaintiffs for a preliminary injunction to restrain the defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as the purported Conservator for the Long Beach Federal Savings and Loan Association, the assistants, servants, agents, representatives, and employees, from merging or consolidating the Long Beach Federal Savings and Loan Association, or commingling its assets with other financial institutions be, and the same is hereby granted. Said defendants John H. Fahey, individually and as Federal Home Loan Bank Commissioner, and A. V. Ammann, individually and as purported Conservator for the Long Beach Federal Savings and Loan Association, their assistants, servants, agents, representatives, and employees, and each of them are hereby permanently restrained and enjoined from making, attempting to make, or instituting any merger, consolidation or reorganization of said Long Beach Federal Savings and Loan Association, and from making any transfers, assignments, conveyances, of any and all of the assets thereof, which might affect or bring about such merger, consolidation and/or reorganization, and from and, of uniting, commingling, joining, or consolidating the securities, assets, cash, resources, property,

membership shares of said association with those of any other association, bank, corporation, organization, or institution whatsoever.

6. That the motions of the plaintiffs and of the defendants and cross claimant in interpleader Title Service Company, and of the defendant and cross claimant in interpleader Robert H. Wallis for preliminary injunction to restrain the holding of an administrative hearing by the Federal Home Loan Bank Board or Administration, or any other person be, and the same is hereby granted, and a permanent injunction be, and the same is hereby granted and the defendants, John H. Fahey, individually, and John H. Fahey, as Chairman of the Federal Home Loan Bank Board, and as the Commissioner thereof, or otherwise, and A. V. Ammann, individually, A. V. Ammann, as purported Conservator of the Long Beach Federal Savings and Loan Association or otherwise, and any and all of their agents, employees, servants, conservators, hearing officers and subordinates, each, and all of them, be and they hereby are, restrained and enjoined from directly or indirectly holding any administrative hearing, or proceeding with, the holding or attempting to hold, any hearing, or hearings, pursuant to Order No. 5309 of the Federal Home Loan Bank Administration, or at all.

7. That the defendant A. V. Ammann, both individually, and as purported Conservator of the Long Beach Federal Savings and Loan Association be and he is hereby removed forthwith as such purported Conservator.

8. That the said officers of the Long Beach Federal Savings and Loan Association be forthwith restored to, and placed in full possession of, and control of the business and all of the business of said Association, and that the said defendants John H. Fahey, A. V. Ammann and their subordinates, agents, employees and servants be, and they are hereby ordered to forthwith deliver, return, relinquish, assign, transfer, convey, quitclaim, surrender and set over to said officers, title control and possession of any and all property of every kind and nature, wheresoever situated, owned by the Long Beach Federal Savings and Loan Association, on or after May 20, 1946, or pertaining to the operation of said Association by said persons thereafter, including all books, records, reports, accounts and other documents, and unless possession of the Long Beach Federal Savings and Loan Association, as aforesaid, upon service of a copy of this decree upon defendant A. V. Ammann, either personally or upon his servant, agent or representative in possession, is forthwith delivered, as aforesaid, let a writ of assistance and possession issue placing the officers of the Long Beach Federal Savings and Loan Association in peaceable and complete possession of the assets, property and business of said Long Beach Federal Savings and Loan Association.

9. That the defendants, A. V. Ammann and John H. Fahey, both individually, and in their representative capacities, are ordered to forthwith render an inventory to the Long Beach Federal Savings and Loan Association and its officers and directors of all property, assets, securities,

cash, instruments, documents, records, and effects, pertaining to or taken from the possession of the said Long Beach Federal Savings and Loan Association, or received by said defendants on or subsequent to May 20, 1946, and the said defendants, and each of them, are further hereby ordered to render, within ten days from the date hereof, their verified account in accordance with rules of sound accounting practice, to this Court, of all monies and income of all kinds received by them, or either of them, and for all acts and transactions done by them, or either of them, while acting as the alleged or purported Conservator or Conservators of said Long Beach Federal Savings and Loan Association, together with interest on all such sums of money so received, and together with a detailed and complete report of any and all transactions had, or done by them as such purported Conservator or Conservators of said Association, on and since May 20, 1946, and that they are further ordered to deliver forthwith to said Long Beach Federal Savings and Loan Association and its officers all such property, stock, bonds, notes and other personal property and such sums of money as they may have received during said period of time, less only such disbursements as the Court shall have found to have been properly made by them, if any.

10. That neither the defendant A. V. Ammann, nor the defendant John H. Fahey in their representative capacities have had any right, title or interest, or claim to any of the properties herein mentioned, or to the properties heretofore inter-

plead and deposited with the Clerk of this Court by the defendants and cross claimants in interpleader. The defendants A. V. Ammann and John H. Fahey in their representative capacities are hereby permanently enjoined from ever asserting any claims, right, title or interest in or to said property, or any of it.

11. That the defendants A. V. Ammann and John H. Fahey are hereby further ordered, within ten days from the date hereof, to produce and deposit with the Clerk of this Court, the said Conservator's bond of the defendant A. V. Ammann, and that the said bond shall remain in full force and effect until further order of this Court.

12. That the defendants John H. Fahey and A. V. Ammann are hereby ordered to do and perform such acts as are necessary or expedient to carry out the provisions hereof.

13. That the plaintiffs and the defendants and cross complainant Long Beach Federal Savings and Loan Association, Title Service Company, a corporation, and Robert H. Wallis, recover their costs of suit herein from the defendants A. V. Ammann and the defendant John H. Fahey in the sum of $_____.

14. There is reserved to the District Court the right to make such other and further orders herein as shall hereafter be necessary to determine collateral issues hereto and to give to this Decree full force and effect.

Dated: At Los Angeles, this 30th day of September 1946, 10 o'clock A. M.

Judgment entered in Civ. Doc. 10:05 A. M. Docketed Sept. 30, 1946. C. O. Book 40, Pages 86–98. Edmund L. Smith, Clerk, by J. M. Horn, Deputy.

Wm. E. Orr,
WILLIAM E. ORR,
Judge of the Circuit Court of Appeals.

David W. Ling,
DAVID W. LING,
Judge of the District Court of the United States.

Peirson M. Hall,
PEIRSON M. HALL,
Judge of the District Court of the United States.

Approved as to form: September —, 194 James M. Carter, United States Attorney; by Rolland Walker, Asst. United States Attorney, Attorneys for Defendants, A. V. Ammann and John H. Fahey.

Approved as to form: September 11, 1946. By Charles K. Chapman, Attorney for Defendant, Long Beach Federal Savings and Loan Association.

Approved as to form: September 11, 1946. Thomas & Wallace, By H. O. Wallace, Attorneys for Defendant, Title Service Company.

Approved as to form: September 11, 1946. By Raymond Tremaine, Attorney for Defendant, Robert H. Wallis.

Approved as to form: September 11, 1946. O'Melveney & Myers, By Jackson B. Chance,

Richard Fitzpatrick, Attorneys for the Third Party Defendant, Federal Home Loan Bank of Los Angeles.

Approved as to form: September 11, 1946. Westover & Smith, By Wyckoff Westover, Attorneys for Plaintiffs.

U. S. GOVERNMENT PRINTING OFFICE: 1946